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Joseph H. Beale, "The Progress of the Law: The Conflict of Laws," 34 HARV. L. REV. 50, 52. But see 20 COL. L. REV. 87. An intent to retain an abandoned domicil should have no more effect than an intent to create a new one.

CONTRACTS — RESCISSION FOR MUTUAL MISTAKE OF FACT. — The defunct B bank entered into a contract with the S bank whereby the S bank agreed to take over the assets and assume all the liabilities of the B bank, and to hold the stockholders of the B bank harmless; and M, a principal stockholder in the B bank, agreed to buy some of its fixed assets from the S bank. After this agreement between the banks was made, L, an officer of the S bank, entered into a contract with M to buy all of his stock in the B bank. Unknown to all the parties a defalcation had occurred, and the assets of the B bank were really only about 50% of the amount represented by its books. The S bank refused to proceed with its contract, and a new one was executed in which the stockholders of the B bank agreed to an assessment on their stock to make up the deficiency. L brought suit to rescind his contract with M. *Held*, that the relief be granted. *Lindeberg* v. *Murray*, 201 Pac. 759 (Wash.).

For a discussion of the principles involved, see NOTES, *supra*, p. 757.

CORPORATIONS — PROMOTERS — LIABILITY OF PROMOTER TO CORPORATION PROMOTED ON ISSUE OF STOCK FOR OVERVALUED PROPERTY. — In preparation for the organization of the A Corporation, X, the promoter, entered into contracts with the stockholders of B Corporation whereby they agreed to receive for each share of B stock one share of A stock, upon the formation of A Corporation. Unknown to the B stockholders, X obtained an option from Y to purchase, for $50000 of A stock, the secret formulae owned by Y and used in the business of the B Corporation. Later, the A Corporation, with X in complete control through the use of dummy directors, was organized with a capital stock of $500000. X caused $15000 capital stock of A Corporation to be issued to the B stockholders in accordance with the above agreement. X also caused $300000 capital stock of A Corporation to be issued to Y, who held this stock for the benefit of X. X sold this stock to innocent purchasers and kept the proceeds. The A Corporation sues X, alleging the above facts and that the formulae were of no value. *Held*, that a demurrer to the complaint be overruled. *American Barley Co.* v. *McCourtie*, 185 N. W. 506 (Minn.).

With a laudable desire to redress a palpable fraud, judges are too apt blindly to permit a corporation to recover "secret profits" from its promoters, regardless of whether or not the corporation has been damaged. It is submitted that, in situations where corporate creditors are not involved, the cases should be divided into two classes. Where the corporation conveys its assets or executes its obligation in return for overvalued property sold to it by promoters, the corporation (unless it has acted through an independent and informed board of directors) can obtain redress for the wrong done it. *Erlanger* v. *New Sombrero Phosphate Co.*, 3 App. Cas. 1218; *Davis* v. *Las Ovas Co.*, 227 U. S. 80; *South Joplin Land Co.* v. *Case*, 104 Mo. 572, 16 S. W. 390. See 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., §§ 291–292. But where, as in the principal case, all that the corporation did was to issue its stock for the promoters' property, the corporation has not been damaged; for a share of stock is not an asset or an obligation of the corporation issuing it — it is merely the holder's fractional interest in the corporation. See R. D. Weston, "Promoters' Liability: Old Dominion *v.* Bigelow," 30 HARV. L. REV. 39. *Cf. Old Dominion Copper Co.* v. *Lewisohn*, 210 U. S. 206. *Contra, Old Dominion Copper Co.* v. *Bigelow*, 203 Mass. 159, 89 N. E. 193; *Pietsch* v. *Milbrath*, 123 Wis. 647, 101 N. W. 388, 102 N. W. 342. See also 22 HARV. L. REV. 48; 58 UNIV. OF PA. L. REV. 226. It has been suggested that the repentant corporation might sue the promoters and recover as trustee for those actually damaged. *Cf.*

Hyde Park Terrace Co. v. *Jackson Bros. Realty Co.*, 161 App. Div. 699, 14 N. Y. Supp. 1037. But this crude procedural device seems unnecessary, particularly under modern statutes allowing liberal joinder of parties plaintiff. The remedy for the promoters' wrong should be extended only to those individual shareholders who have been damaged thereby, and only to the extent to which each has been so damaged. See *Blum* v. *Whitney*, 185 N. Y. 232, 77 N. E. 1159. *Cf.* 8 COL. L. REV. 567.

CRIMINAL LAW — APPEAL — RIGHT OF ONE WHO HAS SERVED SENTENCE TO APPEAL. — The appellant, sentenced to imprisonment for a misdemeanor, after serving the sentence prosecuted an appeal within due time. *Held*, that the appeal be dismissed. *State* v. *Cohen*, 201 Pac. 1027 (Nev.).

An appeal after the payment of a fine imposed in a criminal action is generally denied as moot. *State* v. *Wells*, 127 Minn. 252, 149 N. W. 286; *State* v. *Westfall*, 37 Iowa, 575; *Batesburg* v. *Mitchell*, 58 S. C. 564, 37 S. E. 36. *Contra*, *Commonwealth* v. *Fleckner*, 167 Mass. 13, 44 N. E. 1053; *Johnson* v. *State*, 172 Ala. 424, 55 So. 226. It is arguable that the fine might be repaid, on a reversal, as money paid under corporal duress; in such a case an appeal would not be moot. But if the punishment is a sentence of imprisonment and sentence has been served, a reversal can give the accused no legal benefit. The stigma upon his name forms no part of the legal punishment intended; an appeal to remove it, therefore, involves no legal question and is moot. *Contra*, *Roby* v. *State*, 96 Wis. 667, 71 N. W. 1046. But should an appeal be dismissed on such technical grounds? The administration of justice must conform in some degree to the popular conception of what justice is. Courts sometimes do entertain moot appeals. See 34 HARV. L. REV. 416, 418. A wise rule would leave the allowing of such an appeal to the sound discretion of the court. And the result might well depend upon whether the defendant had availed himself of an opportunity to stay execution pending appeal. See 1912 NEV. REV. LAWS, § 7294.

DIVORCE — PROOF OF ADULTERY — PRESUMPTION OF CHILD'S LEGITIMACY. — 331 days after intercourse between husband and wife, the wife gave birth to a child. The husband sued for divorce on the ground of adultery, introducing no evidence except the unusually long period between intercourse and birth. It appeared by the testimony of experts that, although almost unprecedented, 331 days could not be called an impossible period of gestation. *Held*, that the petition be dismissed. *Gaskill* v. *Gaskill*, [1921] P. 425.

Where, as in the principal case, the fact of a child's illegitimacy must be proved as a necessary step in the proof of adultery, the courts, without inquiring whether they are justified in so doing, adopt the presumptions in favor of legitimacy which are applied in cases where the legitimacy is directly in issue. *Gordon* v. *Gordon*, [1903] P. 141; *Wallace* v. *Wallace*, 73 N. J. Eq. 403, 67 Atl. 612. One of these presumptions is that, if intercourse between husband and wife is proved or admitted, a child born to the wife is the husband's child, unless the husband is impotent or the spouses white and the child a mulatto. See *Gordon* v. *Gordon*, *supra*; *Estate of Walker*, 180 Cal. 478, 181 Pac. 792; *Estate of McNamara*, 181 Cal. 82, 183 Pac. 552. If the child is born within a normal period of gestation, the presumption is conclusive. When the interval is beyond the normal gestation period, the presumption would seem to lose its conclusive character, and the more abnormal the period the weaker should be the presumption. See HUBBACK, EVIDENCE OF SUCCESSION, 413. But there is no evidence to rebut such a presumption in the principal case, and if the presumption can properly be applied in such cases, the decree is correct. The presumption has no basis in logic. See *Estate of McNamara*, *supra*. It is justified by a policy to protect the inheritance of property, the integrity of the